



Appl. No. 10/757,615

Application For Patent Term Adjustment – Mail Date: June 10, 2008

Reply to Notice of Allowance and Determination of Patent Tem Adjustment – Mail Date: April 10, 2008

Appl. No. : 10/757,615

Confirmation No. 4791

Applicant : Klotzer, Daniel

Filed : January 13, 2004

TC/A.U. : 2878

Examiner : Le, Que Tan

Docket No. : 16663/042001

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT

Sir and/or Madam:

In response to the Notice of Allowance and Determination of Patent Tem Adjustment, Mail Date April 10, 2008, please consider the present application for patent term adjustment as follows:

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APPLICATION FOR PATENT TERM ADJUSTMENT

In response to the Notice of Allowance and Determination of Patent Tem Adjustment, Mail Date April 10, 2008, applicant respectfully requests that the Determination of Patent Tem Adjustment be reconsidered to provide applicant the full patent term that they are entitled to. The correct PTA should be 531 days, as fully explicated herein next. The April 10, 2008 notice of allowance included a determination of patent term adjustment (PTA) of 0 days, which applicant will show following is incorrect. The PTA was determined by a computer program that reflected the PALM information record that showed 236 days of USPTO delay and 523 days of applicant delay, resulting in 0 days of PTA. Unfortunately, the PALM record is incorrect, and hence the PTA determined is incorrect. In the following, applicant will detail the actual record, augmented by USPTO information that has become fragmented, and hence unavailable for the computer rendered PTA determination based exclusively on the PALM system.

The 236 accumulated days of PTO delay prior to the notice of allowance, mail date 11-04-2005, are not at issue. The determination that applicant accumulated 523 days of delay between 06-06-2006 and 02-11-2008 is at issue, both in that it is largely not due to applicant's delay, as well as that it is largely due to PTO delay, and hence should be at least in major part added to applicants 236 days, not subtracted. The 523 days of delay is composed of three distinct periods:

- Period 1 of 62 days from 06-06-2006 to 11-06-2006;
- Period 2 of 409 days from 11-06-2006 to 12-20-2007; and
- Period 3 of 53 days from 12-20-07 to 02-11-2008.

These three periods are discretely considered because they arise due to differing circumstances, and hence are affected by differing considerations. Periods 1 and 3 are accepted by applicant as arguably accurate

and are not at issue in the present submission. Period 2 is at issue, and is in fact incorrectly tallied as an applicant delay when it is really a PTO delay, as described subsequently.

Period 2 identified above is 409 days that elapsed between the determination of applicant's submission of an "Informal or Non-Responsive Amendment after Examiner Action", ascertained on 11-06-2006, and the recording of applicant's "Response after Non-Final Action", receipt date 12-20-2007. The critical fact that establishes that this was not applicant's delay, but actually was the PTO's delay, is seen from the Patent Term Adjustment History on Public PAIR which shows the entry: "Notice of Informal or Non-Responsive Amendment", mail date 11-20-2007. In other words, applicant did not receive the "Notice of Informal or Non-Responsive Amendment" until over a year after its ascertaining, because it was not sent until late November, 2007. Applicant made multiple inquiries of the Examiner asking for the appropriate paper (i.e. the Notice of Informal or Non-Responsive Amendment) to be sent so that applicant could make a proper response, but it was not sent until the November 2007 date. Applicant, through an unintended series of events, even ended up speaking with the Examiner's supervisor in regard to this very issue, and this supervisor (Georgia Y. Epps) even made a record of this 09-11-2007 conversation and entered it into the present application's record on 11-20-2007 (see public PAIR Image File Wrapper.) It is therefore a clear fact that the period 2 delay of 409 days was a PTO delay and not applicant's delay, since applicant responded promptly within one month of the actual mailing of the Notice of Informal or Non-Responsive Amendment on 11-20-2007, and hence the 409 days should be credited to applicant rather than deducted from applicant's previously calculated 236 days of PTA. Applicant's correctly calculated PTA delay days should then be: 236 days plus 409 days, equal to 645 days. Applicant's delay should be the sum of periods 1 and 3: 61 days plus 53 days equal to 114 days. Hence, the total PTA for the present application should be: 645 days minus 114 days, equal to 531 days total patent term adjustment.

The present patent application is not subject to a terminal disclaimer, and applicant is not aware of any circumstances that constituted a failure to engage in reasonable efforts to conclude processing or

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examination of such application as set forth in § 1.704. It is respectfully submitted then, that in addition to the acceptance of the included issue and publication fees, that the present application be issued a patent grant with a PTA of 531 days. Thank you for your time.

Respectfully submitted,

KLOTZER PATENTS

By



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